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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,716	03/22/2004	Robert Tod Dimpsey	AUS920040060US1	5962
35525	7590	04/29/2008		
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			EXAMINER NGUYEN, PHILLIP H	
			ART UNIT 2191	PAPER NUMBER
			NOTIFICATION DATE 04/29/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeciipaw.com

Office Action Summary

Application No.

10/808,716

Applicant(s)

DIMPSEY ET AL.

Examiner

Phillip H. Nguyen

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12-19 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the amendment filed 2/19/2008.
2. Claims 1, 3-10, 12-19, and 21-24 remain pending and have been considered below.

Response to Amendment

3. The indication of allowable claims 2-6, 11-15 and 20-24 of the previous final action is withdrawn in view of the new ground of rejection.

Response to Arguments

4. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-10, 12-19, and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by McMillan et al. (USPN 6,118,448).

As per claims 1, 10, and 19:

McMillan teaches:

obtaining the coverage data containing instruction access indicators associated with the code, wherein each instruction access indicator is associated with a different portion of the code, and wherein each instruction access indicator is initialized as being unset prior to execution of its associated code portion (see at least col. 4:33-40 "In the presently preferred embodiment the runtime engine 32 communicates with the integrated development environment through message passing. The message passing technique is used to communicate state information between the runtime engine and the integrated development environment. This state information is then used to impart different visual representations to the graphical objects displayed on the monitor work station 26"; see also col. 5:24-31 "the runtime engine 32 maintains a data store of state data 56. These state data record the runtime performance of the control program, by maintaining a record of how many times each program block was executed during a predetermined number of program cycles. if desired, state data may be recorded for each control block and each decision block that makes up the control program");

identifying instruction access indicators that have been set by a processor in the data processing system in response to execution of the code by the processor to form set instruction access indicators, wherein each set instruction access indicator is associated with an executed portion of the code (see at least

FIG. 4; see also at least col. 5:46-50 "From the always executed state 62, a transition is made to the sometimes-executed state 64 (yellow) if the block was NOT executed on the last scan. Otherwise, the always executed state 62 remains unchanged"); and

generating a presentation for the coverage data, wherein each set instruction access indicators is identified in the presentation (see at least FIG. 4; see also at least col. 5:1-5 "...providing a graphical display that imparts different visual representations to the graphical object", to reflect runtime performance of the control program. In an exemplary embodiment the display will be different colors to show which branches of the control program (a) always execute, (b) sometimes execute and (c) never execute"); and

identifying unset instruction access indicators that have remained unset during the execution of the code by the processor, wherein each unset instruction access indicator is associated with an unexecuted portion of the code, and wherein each unset instruction access indicator is identified in the presentation (see at least FIG. 4).

As per claims 3, 12, and 21:

McMillan further teaches:

wherein the set instruction access indicators are identified in the presentation using a first color and wherein the unset instruction access indicators are identified in the presentation using a second color (see at least col.

5:40-50 "The preferred implementation uses colors to indicate state and the assigned color for the never-executed state is blue. From the never-executed state 60 a transition to the always executed state 62 (red) occurs if the block was executed on the last scan...From the always-executed state 62, a transition is made to the sometimes-executed state 64 (yellow) if the block was NOT executed on the last scan").

As per claims 4, 13, and 22:

McMillan further teaches:

wherein the set instruction access indicators are identified in the presentation using a graphical indicator and wherein the unset instruction access indicators are identified in the presentation using the graphical indicator (see at least FIG. 4).

As per claims 5, 14, and 23:

McMillan further teaches:

wherein the generating step s performed in response to an event (see at least col. 5:1 "providing a graphical display that imparts different visual representations to the graphical objects to reflect runtime performance of the control program").

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As per claims 6, 15, and 24:

McMillan further teaches:

wherein the event is at least one of a completion of the execution of the code, expiration of a time, and the execution of a selected type of instruction in the code (see at least col. 5:1 "runtime performance of the control program").

As per claims 7 and 16:

McMillan further teaches:

wherein the portion of the code is a single instruction in the code and wherein every instruction in the code is associated with a different instruction access indicator (see at least 5:3-4 "to show which branches of the control program (a) always execute, (b) sometime execute...").

As per claims 8 and 17:

McMillan further teaches:

wherein the portion of the code is a subroutine in the code (see at least 5:3-4 "to show which branches of the control program (a) always execute, (b) sometime execute...").

As per claims 9 and 18:

McMillan further teaches:

wherein the portion of the code is a branch instruction in the code (see at least 5:3-4 "to show which branches of the control program (a) always execute, (b) sometime execute...").

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571) 270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM - 3:00 PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN

4/14/2008

/Wei Zhen/

Supervisory Patent Examiner, Art Unit 2191